

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

JERRY BIRD,

No. 3:18-CV-01856-YY

Petitioner,

ORDER

v.

OREGON COMMISSION FOR THE BLIND,
an agency of the STATE OF OREGON, and
THE UNITED STATES DEPARTMENT OF
EDUCATION, REHABILITATION
SERVICES ADMINISTRATION,

Respondents.

HERNÁNDEZ, District Judge:

Magistrate Judge You issued a Findings and Recommendation [22] on March 11, 2019 in which she recommends that Petitioner's Motion to Dismiss [18] be granted in part and denied in part. Petitioner and Defendant Oregon Commission For The Blind (OSB) filed timely objections

to the Findings and Recommendation. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

The Court has carefully considered all objections and concludes that the objections do not provide a basis to modify the recommendation. The Court has also reviewed the pertinent portions of the record *de novo* and finds no error in the Magistrate Judge's Findings and Recommendation.

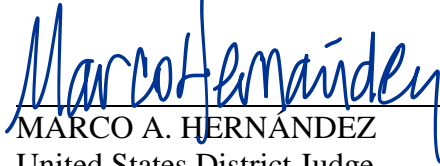
CONCLUSION

The Court adopts Magistrate Judge You's Findings and Recommendation [22].
Petitioner's Motion to Dismiss [18] is granted in part and denied in part as follows:

- (1) Petitioner's Rule 12(b)(6) and Rule 12(c) motions to dismiss OSB's first and third affirmative defenses and first and second assignments of error are granted. As amendment would be futile, the dismissals are with prejudice;
- (2) Petitioner's motion to dismiss the second affirmative defense is denied; and
- (3) Petitioner's alternative motion to strike pursuant to Rule 12(f) is denied as moot.

IT IS SO ORDERED.

DATED this 1 day of June, 2019.


MARCO A. HERNÁNDEZ
United States District Judge